

46 Am. Jur. 2d Judges § 90

American Jurisprudence, Second Edition | February 2022 Update

Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification


2. Interests as Grounds for Disqualification

a. Interests as Grounds for Disqualification, in General

§ 90. Nature of interest of judge as grounds for disqualification —Necessity that interest be direct, certain, and present

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  42 to 44

A.L.R. Library

[Interest of judge in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification, 10 A.L.R.2d 1307](#)

To effect the disqualification of a judge, the interest at issue must be direct, certain, and immediate and not one which is indirect, contingent, incidental, or remote.¹ Recusal, as a matter of due process, is required only where there exists a direct, personal, substantial, or pecuniary interest in reaching a particular conclusion, or where a clash in judicial roles is seen to exist.² A judge has no direct interest in a proceeding which is merely in rem against his or her office;³ a mandamus proceeding is personal rather than in rem.⁴

The interest that disqualifies a judge must also be a present one.⁵ A judge is not disqualified, for instance, in an action because he or she was a former attorney general and as such initiated the action in question as relator.⁶

Footnotes

- 1 [Bratz v. Bratz](#), 4 Conn. App. 504, 495 A.2d 292 (1985); [State v. Meyer](#), 1 Kan. App. 2d 29, 561 P.2d 877 (1977); [City of Bangor v. American Federation of State, County, and Mun. Employees, Council 74](#), 449 A.2d 1129 (Me. 1982); [Manges v. Martinez](#), 683 S.W.2d 137 (Tex. App. San Antonio 1984).
The trial judge's purported pecuniary relationship with the defense mitigation specialist, who was the judge's former law partner, did not create an appearance of impropriety that warranted recusal of the judge in a capital murder prosecution, where the alleged conflict was based on the defendant's belief that the judge had a pecuniary interest in not damaging his former law partner's reputation, which was purely speculative. [State v. Osie](#), 140 Ohio St. 3d 131, 2014-Ohio-2966, 16 N.E.3d 588 (2014), cert. denied, 135 S. Ct. 1562, 191 L. Ed. 2d 649 (2015).
- 2 [Ralis v. Ralis](#), 146 A.D.3d 831, 46 N.Y.S.3d 631 (2d Dep't 2017).
There are four categories of cases in which, as an objective matter, recusal would be required in order to satisfy due process: when a judge has a direct, personal, substantial pecuniary interest in the case; when a judge has an indirect financial interest in the case's outcome; when a judge issues a contempt citation in one case and proceeds to try the contempt citation; and, in rare instances, when a litigant donates to a judge's campaign for office. [State v. Sawyer](#), 297 Kan. 902, 305 P.3d 608 (2013).
A state supreme court justice had a direct, personal, substantial, and pecuniary interest in a decision so that his or her participation in the decision, involving an action against an insurer, violated the Due Process Clause of the Fourteenth Amendment, where the justice had filed similar actions against insurers in state court, and where the opinion the justice wrote, in the deciding vote he cast, had the clear and immediate effect of enhancing both the legal status and settlement value of his own case. [Aetna Life Ins. Co. v. Lavoie](#), 475 U.S. 813, 106 S. Ct. 1580, 89 L. Ed. 2d 823 (1986).
As to the necessity that the interest be substantial, see § 91.
- 3 [Hill v. Kesselring](#), 310 Ky. 483, 220 S.W.2d 858, 10 A.L.R.2d 1301 (1949).
- 4 [Bryant v. Mitchell](#), 195 Ga. 135, 23 S.E.2d 410 (1942).
- 5 [Bratz v. Bratz](#), 4 Conn. App. 504, 495 A.2d 292 (1985); [State ex rel. Mitchell v. Sage Stores Co.](#), 157 Kan. 622, 143 P.2d 652 (1943); [State ex rel. Anaya v. Scarborough](#), 1966-NMSC-009, 75 N.M. 702, 410 P.2d 732 (1966).
- 6 [State ex rel. Mitchell v. Sage Stores Co.](#), 157 Kan. 622, 143 P.2d 652 (1943).

End of Document

© 2022 Thomson Reuters. No claim to original U.S. Government Works.